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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/270,141	03/16/1999	GARY D. FOSTER	SMQ-011	2096

959 7590 08/26/2003

LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

EXAMINER

INGBERG, TODD D

ART UNIT	PAPER NUMBER
2124	7

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/270,141	FOSTER, GARY D.
	Examiner Todd Ingberg	Art Unit 2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 June 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5,8-12,14-20,22,23,30-34 and 38-52 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13,21,24-29 and 35-37 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-5,8-12,14-20,22,23,30-34 and 38-52 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

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Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121

The inventions are distinct, each from the other because of the following reasons:

Invention I - Claims 1 - 5, 8- 12, 14 - 20, 22-23 and 38 - 52 are network distribution of software classified in 717 subclass 177.

Invention II - Claims 30 - 34 are drawn to, the ability to retrieve from a repository (database) that has the shortest response time, classified in 709 subclass 226 "Resource Allocation" and cross reference to 709 subclass 105 "Load Balancing". These claims were originally deemed allowable over prior art of record which was part of the search for invention I. The allowability for these claims has been revoked.

2. Inventions I - II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. Each respective invention has utility as in a system not having the other. See MPEP § 806.05(d).

Telephone Restriction Practice

3. Section 812.01 of the Manual of Patent Examining Procedure (MPEP) states the Examiner does not have to telephone the attorney or agent in cases where the Restriction is deemed complex. The Restriction/ Election is deemed complex by the Examiner and the attorney/ agent should be afforded the benefit of receiving the action for careful review and time to formulate a response.

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Correspondence Information

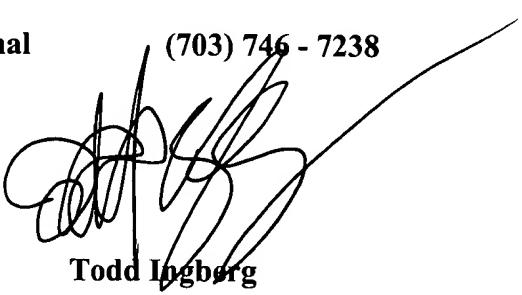
4. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **Todd Ingberg** whose telephone number is **(703) 305-9775**. The Examiner is working a Maxi-Flex schedule and can be reached Monday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the **Examiner's Supervisor**, **Kakali Chaki** be reached at **(703)305-9662**. Any response to this office action should be mailed to: **Director of Patents and Trademarks Washington, D.C. 20231**, or Hand-delivered responses should be brought to **Crystal Park II, 2121 Crystal Drive Arlington, Virginia**, **(Receptionist located on the fourth floor)**, or faxed. The following fax numbers apply:

Official **(703) 746 - 7239**

Non Official/ Draft **(703) 746 -7240**

After Final

(703) 746 - 7238



Todd Ingberg

Primary Examiner

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August 24, 2003